

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VIRAVETH KOC,

Petitioner,

v.

MERRICK GARLAND, *et al.*,

Respondents.

Case No. C24-1355-JLR-SKV

REPORT AND RECOMMENDATION

I. INTRODUCTION

Petitioner Viraveth Koc is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Northwest ICE Processing Center (“NWIPC”) in Tacoma, Washington. He has filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 seeking release from custody. Dkt. 1. Petitioner, who is proceeding through counsel, asserts that he is entitled to release because his detention by ICE has become indefinite within the meaning of *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See id.* at 3. The Government has filed a return memorandum and motion to dismiss, and a supporting declaration by ICE Deportation Officer Cristhian De Castro. Dkts. 8, 8-1. Petitioner has not filed any response to the motion to dismiss. The Court, having considered the parties’ submissions and the governing law, concludes that the

1 Government's motion to dismiss should be granted, Petitioner's federal habeas petition should be
2 denied, and this action should be dismissed.

3 II. BACKGROUND

4 Petitioner is a native and citizen of Cambodia. De Castro Decl. (Dkt. 8-1), ¶ 4. Petitioner
5 was admitted to the United States as a refugee on May 24, 1981, and he adjusted his status to that
6 of a lawful permanent resident on June 2, 1987. *See id.* On March 16, 2005, Petitioner was
7 convicted in King County Superior Court of one count of rape of a child in the first degree and
8 two counts of rape of a child in the second degree. *See id.*, ¶ 5; *State of Washington v. Viraveth*
9 *Koc*, No. 04-1-03379-5, *available at* <https://dja-prd-ecexap1.kingcounty.gov> (last accessed Nov.
10 23, 2024). Petitioner was sentenced on April 29, 2005, to a term of 216 months' confinement.
11 *See id.*

12 On January 18, 2024, Petitioner was transferred into ICE custody at the NWIPC, and the
13 Office of Enforcement and Removal Operations ("ERO") served Petitioner with a Notice to
14 Appear ("NTA"). De Castro Decl., ¶ 6. Petitioner was charged in the NTA with being
15 removable pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated
16 felony relating to sexual abuse of a minor, and pursuant to 8 U.S.C. § 1227(a)(2)(E)(i), for
17 having been convicted of a crime of child abuse, neglect, or abandonment. *See id.* The NTA
18 was thereafter filed with the Executive Office for Immigration Review, which resulted in
19 Petitioner being placed in removal proceedings. *Id.*

20 Petitioner appeared before an immigration judge ("IJ") for removal proceedings on
21 January 23, 2024. De Castro Decl., ¶ 7. At that hearing, Petitioner waived his right to an
22 attorney, conceded the charge of removability, waived his ability to apply for relief from
23 removal, and was ordered removed to Cambodia. *See id.* Petitioner waived his right to appeal

1 the IJ's decision, and his removal order thus became administratively final on January 23, 2024.

2 *See id.*

3 On March 27, 2024, ERO Seattle served Petitioner with instructions regarding what he
4 needed to do to assist in obtaining a travel document ("TD") for his removal. De Castro Decl.,
5 ¶ 8. On April 2, 2024, Removal and International Operations ("RIO") advised ERO that because
6 there are tentative removals to Cambodia, a TD request should be submitted for Petitioner. *Id.*,
7 ¶ 9. Petitioner's TD application was uploaded to the Electronic Travel Document database on
8 May 7, 2024, pending review by the Cambodian Consulate. *Id.*, ¶ 11.

9 On June 6, 2024, ERO Seattle interviewed Petitioner for purposes of his Post Order
10 Custody Review, and ERO's recommendation for continued detention was sent to the
11 Supervisory Deportation and Detention Officer ("SDDO") for review the same day. De Castro
12 Decl., ¶ 12. On August 1, 2024, ERO served Petitioner with notice that the SDDO had approved
13 his continued detention as he presented a danger to the public. *Id.*, ¶ 14.

14 On August 7, 2024, after Petitioner's TD application had been updated at the request of
15 the Cambodian Consulate and Petitioner had provided additional information in relation to his
16 application, Petitioner's TD request was submitted to the Royal Government of Cambodia
17 ("RGC"), accompanied by a request that the RGC schedule an interview for Petitioner. *See* De
18 Castro Decl., ¶¶ 14, 15. Petitioner had his interview with the Cambodian Consulate on August
19 30, 2024. *Id.*, ¶ 17. On September 10, 2024, the RIO-DDO advised ERO Seattle that Petitioner
20 had had a successful interview with the Consulate, and on September 30, 2024, ERO Seattle was
21 advised that Petitioner's TD was expected to be processed on October 1, 2024. *Id.*, ¶¶ 18, 19.
22 Petitioner's TD was mailed to ERO on October 1, 2024. *Id.*, ¶ 20.

1 ICE Deportation Officer De Castro attests in his declaration that as of October 2, 2024,
2 ERO Seattle was awaiting arrival of Petitioner’s TD. De Castro Decl., ¶ 20. Deportation Officer
3 De Castro further attests that once the TD is obtained, ERO will work with the travel coordinator
4 to book a commercial flight to Cambodia, a process that typically takes about a month depending
5 on flight availability. *Id.*, ¶ 21.

6 Petitioner filed his federal habeas petition on August 27, 2024, seeking release from
7 custody on the grounds that there is no substantial likelihood his removal will be effectuated in
8 the reasonably foreseeable future. *See* Dkt. 1 at 3, 5. Petitioner asserts in his petition that
9 Cambodia does not grant travel document requests for people such as him who are deemed
10 “undesirable” and that, as of the date his habeas petition was filed, ICE had been unable to
11 persuade Cambodia to even interview him. *Id.* at 3. Petitioner further asserts that ICE knows it
12 will not be able to deport him in the reasonably foreseeable future, which renders his continued
13 detention purely punitive and therefore violative of his constitutional rights. *Id.*

14 The Government argues that Petitioner’s “post-order” detention is authorized by statute,
15 and that it is constitutional because Petitioner has not demonstrated he is not significantly likely
16 to be removed in the “reasonably foreseeable future.” Dkt. 8. The Government thus requests
17 that Petitioner’s petition be denied and that this matter be dismissed. *Id.* As noted above,
18 Petitioner has not filed any opposition to the Government’s motion to dismiss.

19 III. DISCUSSION

20 Title 8 U.S.C. § 1231 governs the detention and release of noncitizens such as Petitioner
21 who have been ordered removed. Under § 1231(a), the Department of Homeland Security
22 (“DHS”) is required to detain a noncitizen during the 90-day “removal period.” 8 U.S.C.

1 §§ 1231(a)(2), (a)(1)(B). In this case, the removal period began on the date Petitioner’s removal
2 order became administratively final, January 23, 2024, and expired 90 days later on April 22,
3 2024. *See* 8 U.S.C. § 1231(a)(1)(B)(i).

4 After the removal period expires, DHS has the discretionary authority to continue to
5 detain certain noncitizens, including those who are removable under § 1227(a)(2), or to release
6 them on supervision. 8 U.S.C. § 1231(a)(6). DHS also has the authority to detain beyond the
7 removal period a noncitizen who has been determined “to be a risk to the community or unlikely
8 to comply with the order of removal” *Id.* As noted above, Petitioner conceded removability
9 under § 1227(a)(2) at his hearing before an IJ, and ICE subsequently determined as a part of a
10 Post Order Custody Review that Petitioner posed a danger to the public. *See* De Castro Decl.,
11 ¶¶ 6-7, 12, 14. Petitioner’s detention therefore comports with the statute.

12 Although § 1231(a)(6) authorizes ICE to detain Petitioner, it cannot do so indefinitely. In
13 *Zadvydas*, the Supreme Court held that § 1231(a)(6) implicitly limits a noncitizen’s detention to
14 a period reasonably necessary to bring about that individual’s removal from the United States
15 and does not permit “indefinite” detention. *Zadvydas*, 533 U.S. at 701. The Supreme Court
16 determined that it is “presumptively reasonable” for DHS to detain a noncitizen for six months
17 following entry of a final removal order while it works to remove the individual from the United
18 States. *Id.* “After this 6-month period, once the [noncitizen] provides good reason to believe
19 that there is no significant likelihood of removal in the reasonably foreseeable future, the
20 Government must respond with evidence sufficient to rebut that showing.” *Id.* If the
21 Government fails to rebut the noncitizen’s showing, the noncitizen is entitled to habeas relief.
22 *Id.*

1 The six-month presumption “does not mean that every [noncitizen] not removed must be
2 released after six months. To the contrary, [a noncitizen] may be held in confinement until it has
3 been determined that there is no significant likelihood of removal in the reasonably foreseeable
4 future.” *Zadvydas*, 533 U.S. at 701. Nevertheless, “for detention to remain reasonable, as the
5 period of prior post removal confinement grows, what counts as the ‘reasonably foreseeable
6 future’ conversely would have to shrink.” *Id.*

7 In this case, the presumptively reasonable six-month period expired on or about July 23,
8 2024, approximately four months ago. While Petitioner asserts in his petition that his removal is
9 unlikely given Cambodia’s policy of not issuing travel documents to individuals such as himself,
10 the Government has presented evidence through the declaration of Deportation Officer De Castro
11 demonstrating that travel documents have been issued for Petitioner and that, as of the date the
12 declaration was executed, ERO was merely awaiting receipt of the documents so that travel
13 arrangement could be made. Petitioner offers no evidence or argument rebutting that presented
14 by the Government.

15 Though Petitioner has at this point been detained beyond the presumptively reasonable
16 six-month period, this Court concludes, based on the evidence presented by the Government, that
17 it is significantly likely Petitioner’s removal will occur in the reasonably foreseeable future if,
18 indeed, it has not already occurred. Accordingly, Petitioner is not entitled to habeas relief.

19 IV. CONCLUSION

20 Based on the foregoing, this Court recommends that the Government’s motion to dismiss
21 (Dkt. 8) be GRANTED, Petitioner’s federal habeas petition (Dkt. 1) be DENIED, and this action
22 be DISMISSED. A proposed Order accompanies this Report and Recommendation.
23

Steve Vaughan

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